

REMARKS

This Amendment is being submitted in response to the Final Office Action of July 2, 2003. For the following reasons, this application should be considered in condition for allowance and the case passed to issue.

Claim 5 was objected to as being of improper dependent form for failing to further limit the subject matter of a previous claim. This objection has been obviated by the cancellation of claim 5.

The indication of allowability of claim 2 is gratefully acknowledged. This claim has been rewritten in independent form to include all of the limitations of base claim 1 and dependent claim 2. The combined claim has been presented as new claim 9. Accordingly, claim 9 should now be allowed. Similarly, claims 3, 4, 6 and 7 have been added as new claims 10-13, but dependent from new claim 9. Accordingly, these dependent claims 10-13 should also be allowable over the art of record as they say further depend from and limit the claim indicated as allowable.

Claims 1 and 3-7 were finally rejected under 35 U.S.C. § 102(e) as being anticipated by Woo et al. This rejection is hereby traversed and reconsideration and withdrawal thereof are respectfully requested.

One of the features of the present invention is the deposition of a layer of silicon oxide having a thickness of between 20 and 40 Å over silicon nitride spacers and the horizontal surface of the semiconductor substrate and the horizontal top surface of the gate electrode. This silicon oxide layer is removed over the horizontal surface of the semiconductor substrate and the horizontal top surface of the gate electrode. The claimed range of thickness means that the silicon oxide is very thin, which has a number of

advantages, including allowing the overall constant of the device to be lower. Reducing the size of the silicon oxide spacer reduces the overall K value. Another advantage is the greater control of the oxide of the local process since a greater amount of oxide does not need to be removed. Further, a thinner silicon oxide spacer layer allows greater silicide coverage on the source and drain regions. This lowers the contact resistivity of the source and drain regions. Furthermore, the thinner oxide layer allows for faster etching and an increased throughput.

It is axiomatic that in order to anticipate the claims of an invention, a reference must identically disclose each and every element of a claimed invention. Close enough is not good enough. Nor can assumptions be made that a reference discloses a limitation in establishing a case of anticipation. Instead, the reference must actually disclose the claim limitation.

In the instant case, the Examiner submitted that Woo teaches the claimed thickness of the oxide layers, specifically in column 8, lines 35-37. This statement is the following "the greatest thickness of the second sidewall spacers, 39, 41, approximately adjacent to the substrate 10, can be from about 50 to 200 angstroms." The Examiner considered this statement as meaning that lower thicknesses are permissible.

It is respectfully submitted that the Examiner seeks to rewrite the law of anticipation by asserting that what is not disclosed somehow is anticipatory. Woo only discloses that the greatest thickness of the spacers can be about from 50 to 200 angstroms. There is no mention of any other thickness that is less than 50 angstroms. Yet the Examiner somehow has read this range of 50 to 200 angstroms as identically disclosing a range of between 20 to 40 angstroms. There is no justification for such an

assertion. This would mean that whenever any reference discloses any range, that it would anticipate all other ranges, even if these ranges do not overlap.

Further, the Examiner is conjecturing that lower thicknesses are permissible, but this is only conjecture as the reference makes no mention of lower thicknesses being permissible.

Even if the Examiner's assertion that a lower thickness is permissible was correct, Woo does not specifically disclose what that lower thickness would be. There is no guidance whatsoever in this respect. For example, the thickness could be anywhere between 41 to 49 angstroms, which would be lower than the 50 angstroms actually disclosed by Woo, but above the range of 20 to 40 angstroms claimed by the present invention. Thus, there is no actual identical disclosure of Woo that anticipates the present invention. It is inconceivable that the disclosure of a range of thicknesses that is completely higher than a claimed range of thickness can be considered to anticipate the claimed range.

As Woo fails to identically disclose a range of the silicon oxide layer being between 20 to 40 angstroms, Woo cannot anticipate the claims of present invention under 35 U.S.C. § 102(e). Applicants are aware of no case law that would support the Examiner's argument that a disclosed range that is well above the claimed range, such that the ranges do not overlap, would serve to anticipate the claimed range. If the Examiner continues to maintain this final rejection, Applicant respectfully requests citation of case law supporting the Examiner's position so that the issue may be better clarified for appeal.

For all of the above reasons, the rejection of claims 1 and 3-7 under 35 U.S.C. § 102(e) should be reconsidered and withdrawn. Such action is respectfully requested.

In light of the amendments and remarks above, this application should be considered in condition for allowance and the case passed to issue. If there are any questions regarding this Amendment or the application in general, a telephone call to the undersigned would be appreciated to expedite the prosecution of the application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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